Dec 14 Papers the same & motion for day

Dec. 24. Peremptory Mandamus ordered. Nelson J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 8.—(Original.)

EX-PARTE: JOSEPH H. BRADLEY, PETITIONER.

PETITION FOR MANDAMUS.

FILED MARCH 13, 1868.

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1 In the Supreme Court of the United States.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Jos. H. Bradley, of the city of Washington, humbly showeth:

That he was for many years a member of the bar of the Dis- of Columbia, and also of this court.

That without just cause, and without lawful authority, in a proceeding in which the court had no jurisdiction to adjudge, as they have done, the Supreme Court of the District of Columbia, by its order and judgment passed on the 9th day of November, 1867, deprived your petitioner of his lawful right, liberty and franchise, to practice in said court, to which he had, on the 23d day of March, 1863, been duly and lawfully admitted and qualified, and debarred your petitioner from his office as an attorney and counsellor of the said court; and he can have no relief in the premises save by the interposition of this court, by the writ of mandamus, to restore your petitioner to his said right, liberty, franchise, and office, if it shall appear that he has been unjustly, illegally, and without lawful authority, amoved therefrom.

Your petitioner further shows that, on the 29th day of October, 1867, he was served by order of the said court with a rule, a true copy of which is hereto annexed and made part of this petition, and marked A, to which, on the 4th day of November, he made his answer and return, a true copy of which is also hereto annexed, marked B, and made part of this petition; and, on the 9th day said month of November, the said court made their order and judgment on the said rule, a true copy whereof is also hereto annexed, marked C, and made part of this petition.

2 Your petitioner further states, and offers himself ready to show and prove, that the statement of facts in the order made by said Justice Fisher on the 10th day of August, 1867, detailed and contained in said rule and return, is, in point of fact, false and fabricated in every essential particular; that the said Justice Fisher, at the time he so read the same in open court, well knew that the most essential fact stated therein as to the time when the altercation between himself and your petitioner took place was false; and he had stated to Chief Justice D. K. Cartter and others, that after the court had adjourned he had left the court-house on his way home, and discovering that he had left his umbrella, he went back and got it, and as he was coming away he met your petitioner, and then was accosted by him; he avers, and is able fully to prove, that he did not in fact accost the said Justice Fisher in a rude and insulting manner; that he did not charge him with having offered to your petitioner repeated insults during the whole trial; that he did not threaten the said justice with personal chastisement; that the said justice did not offer any explanation, or express any feeling of respect for your petitioner; but, to the contrary of all this, from the first moment when your petitioner addressed him, he was in the

greatest state of excitement, and was the aggressor throughout; and even after he had gone out of the court-room, and out of sight and hearing of your petitioner, he shouted, and pulled up his coat sleeves with violent gesticulations, making the outer hall ring with his cries, declaring that he had been attacked by your petitioner and his son, boasting that he was man enough for both of them, and shouting out let them both come, he well knowing that your petitioner's son had not been near him, and that he, as well as your petitioner, was out of sight and hearing.

Your petitioner files herewith the certificate of the clerk of the said Supreme Court of the District of Columbia, to show that he was the first person admitted to the bar of said court. He is advised that such admission gave him a liberty and franchise of which he can be divested only by due course of law.

3 He is further advised, and will most respectfully beg leave to insist, that Mr. Justice Fisher had no power, authority, or jurisdiction to proceed against your petitioner in the premises in the manner and form set out in the said answer and return of your petitioner.

That the said statement of facts, &c., as aforesaid, made by said Justice Fisher, was false and fabricated, to give color to his claim of jurisdiction in the premises; was most injurious to your petitioner; and it was not a contempt of court to deny the facts and challenge the jurisdiction at that time, and in the manner hereinbefore set forth.

That the said Supreme Court of the District of Columbia had no jurisdiction to proceed against your petitioner in the premises in the manner and form hereinbefore complained of; for the original matter out of which the charge of contempt arose was not committed in open court, or so near thereto as to disturb the administration of justice; and the contempt for which they proceeded to punish your petitioner consisted in his resistance to an injurious attack made on him by the presiding judge extra-judicially, and in a manner well calculated to destroy the independence and rights of the bar.

That the said court in general term had no power, authority, or jurisdiction to punish for an alleged contempt commited in another forum.

That the rule laid on him to show cause why he should not be punished for a contempt, was vague and uncertain, and was no notice of a proceeding for a forfeiture of his said franchise.

That his answer and return to the said rule not having been traversed or denied, are to be taken as true as to the facts therein stated; are a full and complete expurgation from any contempt; and the court had not power to pass judgment of expulsion against him.

That the only remedy your petitioner has is by the writ of mandamus, to redress this most grievous wrong, because no writ of error will lie from the said judgment of the said court; and it being a subject of public concern, because it regards the administra-

4 tion of justice, and also because there is no other remedy by which your petitioner can have relief.

Your petitioner prays of this honorable court that a writ of mandamus may be issued to the justices of the Supreme Court of the District of Columbia, commanding them to restore your petitioner to the practice of his office of attorney-at-law in said court, or that your honors will make such other order, or grant such other relief as law and justice may require, and to this court shall seem appropriate in the premises; and your petitioner will ever, &c.

JOS. H. BRADLEY.

5 *Exhibit No.* 1.

UNITED STATES OF AMERICA, *District of Columbia, to wit*:

Be it remembered that the justices of the Supreme Court of the District of Columbia, established by the act of Congress approved March 3d, 1863, entitled "An act to reorganize the courts of the District of Columbia, and for other purposes," that is to say, David K. Cartter, chief justice, and Abraham B. Olin, George P. Fisher, and Andrew Wylie, justices, come here into the city hall, in the city of Washington, on Monday, the 23d day of March, 1863, when and where the following proceedings are had, (among others.)

The said justices order that the clerk make a list or roll of the proctors, solicitors, attorneys, and counsellors of the Supreme Court of the District of Columbia, embracing therein the names of such proctors, solicitors, attorneys, and counsellors of the District of Columbia as shall before him subscribe, and take the same oath which the said justices have subscribed and taken—that is to say, the oath prescribed by the act of Congress entitled "An act to prescribe an oath of office, and for other purposes," approved July 2d, 1862.

(No. 1.)

I, Joseph H. Bradley, now admitted as an attorney and counsellor of the Supreme Court of the District of Columbia, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yeilded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: so help me God.

JOS. H. BRADLEY.

6 Sworn to and subscribed before me, this 23d day of March, 1863.

R. J. MEIGS, *Clerk.*

Proceedings before the Supreme Court of the District of Columbia in general term, commencing the third Monday, 21st day of October, 1867.

MONDAY, *October* 21, 1867.

Term commenced by proclamation by the marshal, by order of the court. Present: Cartter, chief justice, Fisher and Wylie, justices.

SATURDAY, *November* 9, 1867.

Session resumed pursuant to adjournment. Present: Chief Justice Cartter, and Justices Fisher, Olin, and Wylie.

Exhibit A.

It having been represented to this court, on authority entitled to confidence, that at the June term, 1867, of the Criminal Court, held by Mr. Justice Fisher, and on the 10th day of August last, an order was made by the said justice in the following terms, and said order was then entered on the records of said court: On the 2d day of July last, during the progress of the trial of John H. Surratt for the murder of Abraham Lincoln, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, Joseph H. Bradley, esq., accosted him in a rude and insulting manner, charging the judge with having offered him a series of insults from the bench from the commencement of the trial. The judge disclaimed any intention whatever of passing any insult, and assured Mr. Bradley that he entertained for him no other feelings but those of respect. Mr. Bradley, so far from accepting this explanation or disclaimer, thereupon threatened the judge with personal chastisement, as he understood him. No court can administer justice or live if its judges are to be threatened with personal violence on all occasions whenever the irrascibility of counsel may be excited by an imaginary insult. The offence of Mr. Bradley is one which even his years will not palliate. It cannot be overlooked nor go unpunished as a contempt of court. It is therefore ordered that his name be stricken from the rolls of attorneys practicing in this court.

And it having been also credibly represented to the court that, immediately after the said order was announced, the following language was employed by the said Joseph H. Bradley, in the hearing of, and addressed to the said justice, during the sitting of the said court:

Mr. Bradley. Has the court adjourned yet?

Judge Fisher. No, sir.

7 Mr. Bradley. Then, before it does adjourn, I desire to say, in the presence of this audience, that the statement you have read is utterly false from beginning to end.

And that on the same day, and immediately after the adjournment of the said court. the said Joseph H. Bradley followed the said justice into one of the street cars in this city, and then and there handed

to him a note in the following terms, written and signed in the proper hand of the said Bradley:

WASHINGTON, *August* 6, 1867.

Hon. George P. Fisher:

SIR: In the altercation which occurred between us when you returned to the court-room, after the adjournment on the 2d of July last, you observed that you were sick, and were then pleased to add: "You know where to find me; and I hold myself responsible in every form for whatever I say or do," or words to that effect, after which you applied to me the most opprobious epithets. There is but one interpretation of such an intimation received among gentlemen. I told you I could wait, and I am gratified to find you have recovered, and that the trial of the then pending case being now closed, we are both at liberty.

That no time may be unnecessarily lost, I beg you will let me know, as soon as you conveniently can, when it will suit you to meet me out of this District, that we may arrange to our mutual satisfaction the points of difference between us, without incurring the risk and odium which might accompany any controversy here or in public.

With the same view I take the liberty to hand you this note in person,

And am, sir, your most obedient servant,

JOS. H. BRADLEY.

And said conduct and language requiring, in our opinion, investigation by this court, it is therefore ordered, that the said Joseph H. Bradley show cause, on or before the 4th day of November next, why he should not be punished for contempt of this court, by reason of said offensive conduct and langauge towards one of its members, and relating to the official acts of the said justice. And it is further ordered that, until the final disposition of this order, the said Joseph H. Bradley shall continue suspended from practice in this court.

8 *C.—Filed with petition of J. H. Bradley.*

In the matter of Joseph H. Bradley, sr.—Contempt of court.

Mr. Bradley having filed his answer to the rule of court served on him, and having been heard at the bar in support of his answer, it is by the court ordered that, for the causes set forth in said rule, the name of Mr. Bradley be stricken from the roll of attorneys, solicitors, &c., authorized to practice in this court.

DISTRICT OF COLUMBIA, *to wit*:

I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, certify that the foregoing are true copies taken from the records and files in this court.

In testimony whereof I do hereunto subscribe my name and affix the seal of said court. Done at the city of Washington this twenty-eighth day of February, A. D. 1868.

[SEAL.] R. J. MEIGS, *Clerk*.

9 *Exhibit B.—Return of Jos. H. Bradley to the rule.*

Mr. Bradley read his answer to the rule, as follows:

To the honoroble the justices of the Supreme Court of the District of Columbia:

Joseph H. Bradley, one of the members of the bar of said court, makes this his return to the rule served on him to show cause "why he should not be punished for contempt of this court, by reason of said offensive conduct and language to one of its members, and relating to the official acts of said justice," the facts constituting which imputed offensive conduct and language are set out in said rule. This respondent takes this occasion to express his satisfaction at the opportunity thus afforded him to present to this court and the public his version and statement of the facts involved in this "investigation," and thus to purge himself from any intentional disrespect, contumely, or contempt toward this court, or any member thereof, in the transactions referred to. And at the outset, he, in the most distinct, explicit, and unequivocal terms, disclaims and disavows any intention, or that he did knowingly or wittingly do any act, or use any language, directly or indirectly, to impugn the conduct of Mr. Justice Fisher in his official acts; nor did he, so far as he knows or is advised, exhibit any offensive conduct or use any offensive language towards the said justice in his said office, or in any manner touching or relating to any judicial act of said justice. To the contrary thereof, he says he hath ever demeaned and meant, and intended to demean himself towards the said justice, in his said office as judge, with that respect and decorum which is due to the judicial office from all, but especially from every member of the bar of the court. And he avers, and will endeavor to show to the satisfaction of this court, that he did so demean himself in respect to the instances set out in this rule. This respondent, now proceeding to make his return to the several matters of fact and allegation requiring "investigation," and set out and contained in the said rule and the recital thereto, proposes to divide the rule into several distinct heads for the more ready comprehension of the whole subject involved in this supposed contempt. He must, therefore, assume that the order of Justice Fisher is taken by the court to be part of the charges against the respondent, and not the finding and judgment of a court competent to pass said judgment. In any other case, and treating and considering that as a final judgment by a court having jurisdiction of the subject-matter and person, this respondent has not been a member of the bar of this court since the moment that judgment was pronounced, and the present proceeding cannot be maintained.

Taking this view of the case, this respondent understands that it is charged:

First. "That on the second day of July last this respondent did, immediately after the court had taken a recess until the following morning, as the presiding justice was descending from the bench, accost him in a rude and insulting manner, and charged him

with having offered him (Mr. Bradley) a series of insults from the bench from the commencement of the trial."

Second. "That the judge disclaimed any intention whatever of passing any insult, and assured Mr. Bradley that he entertained for him no other feelings but those of respect. Mr. Bradley, so far from accepting the explanation or disclaimer, thereupon threatened the judge with personal chastisement."

Third. "That immediately after the judgment of the justice was pronounced ordering the name of this respondent to be stricken from the roll of attorneys practicing in this court, this respondent asked, 'Has this court been adjourned?' and being answered by the judge in the negative, he said: 'Then, before it does adjourn, I desire to say, in the presence of this audience, that the statement you have read is utterly false from beginning to end.'"

Fourth. "That on the same day, and immediately after the adjournment of said court, this respondent followed the said justice into one of the street cars in this city, and then and there handed to him the letter or note set out in said rule."

To each and every of these allegations this respondent answers not guilty of any contempt.

And proceeding to answer them severally and in detail, he says: The court had been engaged for nearly a month in the trial of the case of the United States vs. John H. Surratt, which had been commenced in the March term of said court and continued over under the act of Congress, and after the legal expiration of that term and after the commencement of the June term of the court. The trial had been a most fatiguing and exciting one; the court-room had been crowded to repletion, and both the presiding justice and the counsel engaged in the cause had been made sick, in addition to the extraordinary wear and tear which the case itself had produced. On the first of July a witness on the stand had made a most unprovoked assault upon Mr. Merrick, one of the counsel for the defence, and this respondent had, after the adjournment of the court, visited the presiding justice and brought the facts to his attention, and had with him a most agreeable and satisfactory interview. On the next day, the second of July, the respondent, as he and others who commented upon it in his hearing understood it, immediately after the opening of the court, and again after the noon recess, was treated by the judge with great indignity, to all which he respectfully and quietly submitted.

MEMORANDUM.—(The report of the day's proceedings in the volume published by Messrs. Clephane and Smith does not contain the incidents of which this respondent thought he had reason to complain, but they are quite fully stated in the report of Mr. Sutton.)

After the court adjourned on that day the chief justice was sitting on the bench, and was shortly after joined by Col. Todd, and both remained there conversing until after the incidents occurred, presently to be stated. Judge Fisher left the bench and went through the room occupied by Mr. Phillips into the room next beyond, and remained there some time. While he was in that room this respondent

was sitting with his colleague at the north side of the court-
11 room, and got up and walked into Mr. Phillips' room, and not seeing Mr. Phillips there, returned to his seat. After a few minutes he went again to Mr. Phillips' room, and spoke to him about a witness who was to be paid off, and while he was there Judge Fisher passed immediately by him and went towards, and, as this respondent believes, out of the front door of the building. This respondent then went to the court-room and was talking with Mr. Phillips, who was paying off the witness, when judge Fisher came into the court-room, passed by this respondent, and ascended the steps toward the bench—part of the way only—reached forward his hand under the desk of the bench, took what this respondent believes was an umbrella, and turned and was descending the steps towards this respondent. Before he returned to the court-room the jury had left the court-house; the prisoner had gone back to jail; the crowded audience, except a few who still lingered, most of them about the doors, had dispersed. Some of the witnesses who were waiting to be paid off, still remained. As the judge approached this respondent, the latter addressed him these words: "Judge, what do you mean by treating me as you have done to-day?" These are the identical words he used, and the only words he did use at that time. Of this he is positive, distinct and clear. The judge replied in great excitement, shaking his finger in respondent's face, and with insult, as this respondent understood him, for he immediately said: "You insult me, sir. I am too old, and my position at this bar and in this community is such that I cannot submit to such indignity." These words this respondent remembers. He may have added, "No man shall insult me with impunity," but of this he has no distinct recollection; but he distinctly states and avers as a fact, to the best of his recollection and belief, that this was all that was said at any time by either party during that interview about insult. Other words passed in which this respondent said the judge had treated him with indignity, but not one word was said which could be tortured into a reference to the official conduct of the judge towards this respondent, except as to what had passed that day, until the judge saying he was sick, this respondent replied, in substance, that he could wait, and turned to leave him. Upon this the judge said to this respondent, "Sick as I am, I am enough for you now. I will put my sickness against your age." (I give these words to the best of my recollection; I know that he added,) "Step out with me; step out, if you dare." This respondent replied: "I cannot decline that invitation; we will go into a private room and settle this matter between ourselves." and stepped towards the judge, when he was seized by Mr. Phillips and several others, and forcibly restrained; and, while he was thus held, the judge, extending his clinched hand towards him. said: "You know where to find me," or "where I am to be found." (The precise phraseology is not recollected, but it was one or the other.) "I am responsible in every form for whatever I say or do. You are a scoundrel and a coward." This respondent replied, "I cannot bandy epithets, but can wait," and turned and left him; passed along in front of the bench to the north side, sat down by the

chief justice; and so little disturbance had the occurrence cre-
12 ated, that although it all passed within eight or ten feet of him it had not attracted his attention sufficiently to induce him to look around.

Thus this respondent has replied to and answered the first allegation; and if his version and statement of his facts are true, it will sufficiently appear not only that he did not accost the judge in a rude and insulting manner, nor charge him as stated therein, but it is clear that he did not offer the judge any insult or indignity, or offensive conduct or language in reference to any official act of his; but whatever did pass between them of an offensive character was a considerable time after the court had adjourned, and was confined to personal acts and language as individuals, having no reference to any official matter, but growing out of what occurred at that time.

He maintains that he had a perfect right to seek from the judge an explanation of his conduct. The judge had a right to refuse it, and put his refusal on the ground of his official character. Had he done so, no further inquiry would have been right. But if, instead of doing so, he entered into an altercation with respondent, they stood to each other as individual citizens, not as judge and attorney, and neither the judge nor any court could proceed against the party for a contempt. It was no contempt.

As to the second allegation, this respondent says: He distinctly aver that he did not hear the judge disclaim any intention of passing an insult; nor did he hear him say that he entertained for this respondent no other feelings but those of respect. He has already stated the facts as he understood them at the time, and as he has learned from the by-standers who were near him, they understood them in every material part.

He avers, in the most direct and unequivocal terms, that he did not threaten, nor mean, or intend to threaten the judge, nor did he say or do anything from which a threat of personal violence to the judge could rationally be inferred. He avers that he did not approach or address the judge with, or for a moment harbor such an intention. His object was an explanation of what he felt to be an indignity offered to him in open court, and he wished that explanation to be made in the presence and hearing of some of those who witnessed the supposed indignity. If he had heard any offer of an explanation it would have been most gratifying to him, and would have fully satisfied his desire.

Now as to the third division of the allegations: This respondent says the portion of the report of what passed at the time referred to is incomplete. He says, as reported by Mr. Sutton, and as it in fact occurred, there should be added to the report as follows:

"Judge Fisher. Crier, adjourn the court.

"The crier. By order of the court, it is now adjourned.

"Mr. Bradley. Now I will say it.

"Judge Fisher. You can say what you like. If you wish to make a speech to the crowd you can do so.

"Mr. Bradley. In the first place, I say you have no right to expell me. The Supreme Court alone can do that.

"Judge Fisher (leaving the room.) Very well; take an appeal. That is all."

13 This respondent will not willingly or knowingly do Judge Fisher any injustice. The judge, in the recital of the order now to be considered, has shown that he understood the facts very differently from the statement of them just made by the respondent. But it is clear he is mistaken in supposing these incidents occurred immediately after the court had taken the recess, as the presiding justice was descending from the bench; and at that time the judge was under the impression, and so stated, that respondent's son was engaged with him in the said supposed assault, when, in point of fact, he was not near him. The judge,, as the respondent is informed, is himself now satisfied that was a mistake. This respondent has no design or desire to raise a question of veracity here with Judge Fisher, but he gives his recollection and understanding of the facts from his point of view, and as he noted them down within half an hour after they occurred. This court knows too well from facts transpiring every day before it, that the most honest and intelligent men will differ in their narrative of facts occurring under their immediate observation, in which they had no interest. Much more is this the case when that observation is clouded by excitement, by passion, or by interest. Yet this respondent would not so confidently have stated his recollection of the facts if he had not found himself corroborated in every material point by persons who were accidentally near him.

No one can conceive the extremity of his surprise when, on the 10th of August, more than a month after the occurrence, at the close of the case, the presiding justice proceeded to read his version and recollection of those facts as set out in the order, now to be considered. Until then this respondent had all along well believed that he was the injured party. He knew full well that he had submitted with quiet difference to the mandates and rulings of the court, and to what he felt and had heard others say were indignities offered to him on the 2d of July in open court; and that he had not offered to the judge any insult or offensive language for or on account of those matters, but he was amazed to find himself so charged with such an offence, or that the judge had so understood him.

Having during that month fully considered the question, he had come to the conclusion of law which he still holds, that the judge had no jurisdiction to proceed against him for a contempt without notice, and he had received no notice of such proceeding. And he now states and shows to this court that the judge had no power or jurisdiction to proceed against him as he did and to enter the judgment contained in that order, and that the whole proceeding was coram non judice and void.

First. Because, if the proceeding was under the common law powers of the court, it required notice to the party. The cases on this point are full and distinct.

Second. If it was under the statute, the act of 2d March, 1831, 4th Statutes, 487, expressly prohibited it, and took away the common law power to that extent.

Third. The only power to admit an attorney to this court, is in the court in general term. He is an attorney of the Supreme
14 Court, and not of any particular branch of it, and his franchise can be taken away only by the power which granted it.

An additional reason has been suggested to this respondent by an eminent member of the profession, and which he begs leave to submit for the consideration of the court as very conclusive, viz: The case on trial having been closed, the judge, under the act of 16th February, 1853, (10th Stat., 160) was functus officio, and had no power to proceed as he did to judgment of dismissal of this respondent.

Believing, as this respondent did believe, and does now most respectfully maintain, for the foregoing reasons, that the whole proceeding of the judge was void, that the paper which he read was not the finding of a court of competent jurisdiction, and the judgment not voidable but a nullity, which could be impeached in any collateral proceeding, and considering it but as the unauthorized statement of the view of an individual, not as a judge, but as an individual, this respondent interposed the denial which is made the ground of complaint against him. He did this promptly and emphatically, and in the briefest terms, lest by any possibility his silence should be taken as an admission of the facts thus stated, and without the remotest idea that he was thereby guilty of any contempt. The language is supposed to be a subject of complaint. It is precisely such language as is tolerated and allowed in this court every day in answer to bills in chancery, and in all proceedings where a series of facts are intended to be put in issue. Indeed, the idea of contempt or disrespect to the court did not enter his mind, nor did he intend any disrespect to the court. What followed that language, and his return herewith, shows he meant no disrespect to the court, but to put in issue that statement of facts, which he had a right to do if the court had no jurisdiction.

There was no time allowed for a selection of phrases. It was necessary to be prompt and decisive, and to deny the facts and challenge the jurisdiction at once. The acts and language imputed to him involve his character and position as a member of this bar, and he had no notice, nor had anything been said or done which could have put him on his guard.

So much for the moral question. But this respondent most respectfully submits it was not a technical contempt. That most eminent lawyer, jurist, and judge, the late Chief Justice Taney, speaking of the power of the court to punish for contempt, says:

"The power, however, is not an arbitrary and despotic one to be exercised at the pleasure of the court; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court as the rights and dignity of the court itself," (19 Howard, 13.) And it has been said by almost equally high authority: "The invariable rule is, that a judgment rendered without citation or notice, or opportunity for defence, is a nullity; not erroneous nor voidable, but absolutely void."

"It is a cardinal principle in the administration of justice that no

man can be condemned or divested of his rights until he has had the opportunity of being heard. He must, either by service of process, publishing of notice, or in some other way be brought into court, and if judgment is rendered against him before that is done, the proceedings will be as utterly void as though the court had undertaken to act where the subject-matter was not within its jurisdiction." (7 Howard, Miss. Rep., 127.)

If this respondent is right, and he is perfectly confident that he is, he committed no technical contempt in the response he gave to the judge, or in the manner of that response. And thus he trusts he has shown that, as to this third ground of the charge, he did not mean to commit any contempt, and was not guilty of any technical contempt.

The fourth accusation relates to his delivery to Mr. Justice Fisher of the letter set out in the rule, and to the time and manner in which that was done.

His answer to that will be found in part in his answer to the first head. The letter speaks for itself, and shows that the matter complained of had nothing to do with any judicial act of Judge Fisher, but was specially directed to the insult already shown to the court, which immediately followed his declaration that he was responsible for what he said. That letter was written on the 7th of August, when it was supposed the case would be closed. It was to be delivered as soon as the case was closed. For no man of any character or sensibility could rest under the insult which the respondent had, as he understood it, received a moment longer than was indispensably necessary before seeking an explanation and retraction of it. It was then supposed that Judge Fisher was surrounded here by influences which would prevent or disturb any attempt to obtain such explanation and retraction. Besides, it was not deemed advisable to seek those explanations, or that compromise and adjustment of private quarrels which too often result in a breach of the peace in a jurisdiction where the parties might be made amenable to a criminal proceeding before the court of which one of the parties was a member. So far as this goes, it is respectfully submitted that this court has no jurisdiction to try this respondent for a contempt. He concedes that if he had sent a challenge to Judge Fisher, it might have fallen within the supervisory power of this court. But it was not a challenge, nor meant nor intended for one. It was precisely what has been stated—opening a way for an amicable settlement of a private controversy; and to remove any doubt on that subject, this respondent had withdrawn it before any action was had by this court in his case, or any intimation given that any action would be taken on it.

As to the manner and time of delivering, the facts are, that Judge Fisher left the room, as stated in Sutton's report. This respondent did not know where he had gone, but was himself on his way to his office when he saw Judge Fisher sitting in the window of a street car near the corner of his office. The car stood there until respondent reached it, and he entered it and delivered the letter to Judge

Fisher with all due courtesy, and without noise or hostile demonstration. If he had not accidentally seen him, as he has stated, he should have gone immediately to his residence, as he had already suffered long enough under the imputation he has mentioned.

16 His object and determination was to open the speediest way to that explanation and retraction which every honorable man must be desirous to make when he becomes satisfied he has done an injury to another.

In this he conceives that, so far from meriting censure, he is rather entitled to commendation, as he did not send a hostile message, but took the initiative step for explanations by delivering himself a respectful letter, when he might with propriety have considered the door closed against them, except on the voluntary motion of the party supposed to have done the wrong. Certainly he was not guilty of any contempt of court in so doing. If, upon consideration, the court shall not be satisfied that the matters complained of originated in one of those unhappy misunderstandings to which the best balanced minds are sometimes subjected, and out of sudden heat produced by such misunderstanding, he most respectfully asks, and begs leave to insist as a right, that he shall be allowed to present such proofs as may be within his reach in support of his said statement; and if it be deemed material, and the court has doubts as to the law which this respondent claims as applicable to this case, that he may be heard by counsel.

In conclusion, and thanking the court for the indulgence they have shown him, and trusting that he has satisfactorily shown that he has not been guilty of any contempt, moral or technical, towards the court, or towards the particular member indicated in this rule, in any matter relating to his judicial functions, he begs leave to say that, in making this minute and detailed statement, he has confined himself to so much and such parts of the facts relating to this case as were absolutely necessary to a clear understanding of his position. He has fully and fairly stated the facts according to the best of his recollection. But if, in any respect, he has been mistaken in regard to them, or if he has (however unintentionally) committed any contempt of the court, he has only to express his most profound regret, and to ask to be permitted, so far as possible, to recall any act and withdraw any expression which might be interpreted as an indignity to the judicial tribunals of his country, and especially those of his native District, whose dignity and authority he would desire to uphold on all occasions.

(Signed) JOSEPH H. BRADLEY.

Sworn before me November 4th, 1867.

R. J. MEIGS, *Clerk.*

17 Supreme Court of the United States. No. 9, original.—December term, 1867. Ex parte: Joseph H. Bradley, petitioner.

Petition for a mandamus.

To the justices of the Supreme Court of the District of Columbia:

On consideration of the petition filed and of the arguments of counsel in support of the same, it is now here ordered by the court that a rule issue in this cause to the justices of the Supreme Court of the District of Columbia, requiring them to show cause, on the first Monday of December next, why a writ of mandamus should not issue agreeably to the prayer of the petitioner, the question of jurisdiction of this court being reserved for further consideration upon the coming in of the answer to the rule.

25 March.

I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the above is a true copy of the order of said Supreme Court made in the case of ex parte: Joseph H. Bradley, petitioner, &c., at December term, 1867, as the same remains on the records of the said court, and that the annexed printed pages, numbered from one to sixteen, inclusive, contain a true copy of the petition referred to in said order, and of the exhibits accompanying the same, as the same appear on the files of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this twenty-first day of October, A. D. 1868.

[SEAL.] (Signed) D. W. MIDDLETON,
Clerk Sup. Court U. S.

18 Endorsed: Supreme Court U. S., 1868, Dec. term. Original, No. 8. Ex parte: Bradley, petitioner. Service of rule. Filed 27 October, 1868. Served on the justices of the Supreme Court of the District of Columbia, by delivering to the chief justice thereof, in open court on the 26d day of October, 1868, a duplicate copy of this order. R. C. Parsons, marshal, per H. H. Rearden, ass't marshal.

19 *Return made by the judges of the Supreme Court of the District of Columbia to the rule to show cause, granted by the Supreme Court of the United States, in case of Jos. H. Bradley.*

20 Proceedings before the Supreme Court of the District of Columbia in general term, commencing on the third Monday 19th day of October, 1868.

SATURDAY, *December 5th*, 1868.

Session resumed pursuant to adjournment. Present: Chief Justice Cartter and Justices Olin, Fisher, and Wylie.

Ex parte:

JOSEPH H. BRADLEY,
Petitioner.

A rule having been served on the several justices of this court, whereof the following is a copy:

21 Supreme Court of the United States: No. 9 original. December term 1867. Ex parte: Joseph H. Bradley, petitioner.

Petition for mandamus.

To the justices of the Supreme Court of the District of Columbia:

On consideration of the petition filed, and of the arguments in support of the same, it is now here ordered by the court that a rule issue in this cause to the justices of the Supreme Court of the District of Columbia, requiring them to show cause, on the first Monday of December next, why a writ of mandamus should not issue agreeably to the prayer of the petitioner, the question of the jurisdiction being reserved for further consideration upon the coming in of the answer to the rule.

25 March.

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In testimony whereof I hereunto subscribe my name, and
23 affix the seal of the said Supreme Court, at the city of Washington this twenty-first day of October, A. D. 1868.

D. W. MIDDLETON,
Clerk, Sup. Court, U. S.

Thereupon it is ordered, this fifth day of December, 1868, that the following be adopted as the return of this court to said rule; that this order be entered upon the minutes of this court, and that a copy thereof, including said return, be cerified to the said Supreme Court of the United States, to wit:

24 Supreme Court of the United States.—No. 9 original—December term, 1867.—Ex parte Joseph H. Bradley.

Petition for a mandamus, to the justices of the Supreme Court of the District of Columbia.

To the honorable the chief justice and the associate justices of the Supreme Court of the United States:

The justices of the Supreme Court of the District of Columbia, for return to the rule upon them, in this case, to show cause why a

17 Supreme Court of the United States. No. 9, original.—December term, 1867. Ex parte: Joseph H. Bradley, petitioner.

Petition for a mandamus.

To the justices of the Supreme Court of the District of Columbia:

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[SEAL.] (Signed) D. W. MIDDLETON,
Clerk Sup. Court U. S.

18 Endorsed: Supreme Court U. S., 1868, Dec. term. Original, No. 8. Ex parte: Bradley, petitioner. Service of rule. Filed 27 October, 1868. Served on the justices of the Supreme Court of the District of Columbia, by delivering to the chief justice thereof, in open court on the 26d day of October, 1868, a duplicate copy of this order. R. C. Parsons, marshal, per H. H. Rearden, ass't marshal.

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Ex parte:

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Thereupon it is ordered, this fifth day of December, 1868, that the following be adopted as the return of this court to said rule; that this order be entered upon the minutes of this court, and that a copy thereof, including said return, be cerified to the said Supreme Court of the United States, to wit:

24 Supreme Court of the United States.—No. 9 original—December term, 1867.—Ex parte Joseph H. Bradley.

Petition for a mandamus, to the justices of the Supreme Court of the District of Columbia.

To the honorable the chief justice and the associate justices of the Supreme Court of the United States:

The justices of the Supreme Court of the District of Columbia, for return to the rule upon them, in this case, to show cause why a

mandamus should not issue, requiring them to restore the said Joseph H. Bradley to the office of an attorney of said court, respectfully make answer, that said rule ought to be discharged:

1. Because said Bradley was removed from the said office of attorney of said court only after due notice had been served upon him, and he had been heard in defense, and after mature consideration by the court. That said order of the court was a judgment of the court in regard to a matter within its own exclusive jurisdiction, and not subject to review in any other court; and especially not, in this form of proceeding.

The question as to the jurisdiction of the Supreme Court of the United States to reverse the judgment of an inferior court, in cases of this character, by mandamus, was decided in ex parte Secombe, 19 How., 9, and we beg leave to incorporate in this return several paragraphs of the opinion in that case, delivered by Ch. J. Taney:

"A mandamus," say the court, "has been moved by David A. Secombe, to be directed to the judges of the Supreme Court of the Territory of Minnesota, commanding them to vacate, and set aside an order of the said court, passed at January term, 1856, whereby the said Secombe was removed from his office as an attorney and counsellor of that court."

"In the case of Tillinghast v. Conkling, which came before this court at January term, 1829, a similar motion was overruled by this court. The case is not reported, but a brief written opinion remains on the files of the court, in which the court says, that the motion is overruled upon the ground that it had not jurisdiction in the case."

"The removal of the attorney and counsellor in that case took place in a District Court of the United States, exercising the powers of a Circuit Court; and in a court of that character, the relations between the court and the attorneys, and counsellors who practice in it, and their respective rights, and duties are regulated by the common law. And it has been well settled, by the rules and practice of common law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed."

* * * * * * * * *

"The court, it seems, were of opinion that no notice was necessary, and proceeded without it; and whether this decision was erroneous or not, yet it was made, in the exercise of judicial authority, where the subject was within their jurisdiction, and it cannot, therefore, be reversed in this form of proceedings." The opinion in this case was referred to, with approbation, by this court in the recent case, ex parte Garland, 4 Wallace, as we shall presently show.

If it be authority, it would seem to be conclusive, in the present case, and your respondents might rest their defense upon it alone.

But since this court has declared, on several occasions, that it would not grant a rule to show cause why a mandamus should not issue, except on a prima facie case, and the decisions, just referred to, are of recent date, and well known to the court which made them, we are not at liberty to assume, as certain, that your honors

will regard them as applicable to the case now before you, or, if applicable, that they will be followed.

It is incumbent upon us, therefore, to go farther and show other cause why the present rule should be discharged:

On the 10th of August, 1867, Judge Fisher was holding a
26 criminal court, and after reading a statement of facts in reference to the conduct of said Bradley towards the said judge, in the progress of a trial which had then closed, and growing out of said trial, made an order that said Bradley should be dismissed from the bar of the Supreme Court of this district, when the following scene took place:

"Mr. Bradley. Has the court adjourned yet?

"Judge Fisher. No, sir.

"Mr. Bradley. Then, before it does adjourn, I desire to say, in the presence of this audience, that the statement you have read is false from beginning to end."

Thus far the accuracy of this report is not denied, but the petitioner alleges that the controversy was continued, as follows:

"Judge Fisher. Crier, adjourn the court.

"The crier. By order of the court it is now adjourned.

"Mr. Bradley. Now I will say it.

"Judge Fisher. You can say what you like. If you wish to make a speech to the crowd you can do so.

"Mr. Bradley. In the first place I say you have no right to expel me. The Supreme Court alone can do that.

"Judge Fisher, (leaving the room.) Very well. You can take an appeal."

It is not easy to discover how this continuation of the dialogue tends to qualify the character of the scene which preceded it.

It can hardly be doubted that this was a gross contempt of court, if there was a court sitting at the time, and justified expulsion, unless atoned for by an ample apology.

But no apology has ever been offered. On the contrary, the contempt has been defended, and its justification attempted even before this court.

One of the grounds of justification is, that the judge to whom the contempt was offered had no power to make the order of expulsion, which produced the act of contempt; and that, therefore, the contempt was coram non judice. But that does not follow. The question is not whether the judge had authority to make the order, but as to the contempt after the order had been made, and a contempt can never be coram non judice in open court.

The other ground of defense for this conduct is, that the act was not a contempt of the Supreme Court of the District of Col-
27 umbia, that court having subsequently taken up the subject, de novo, and removed the petitioner from its bar.

But at the time the contempt was given Judge Fisher was holding a Supreme Court and exercising its criminal jurisdiction as such Supreme Court. There is no criminal court in this district; there is, therefore, no judge of a criminal court in this district. The act

of 3d March, 1863, abolished both the Circuit and Criminal Courts of the District of Columbia, and transferred all their several powers and jurisdictions to the Supreme Court, created to take their place. It prescribes in what manner said Supreme Court shall exercise those powers and jurisdictions. One of the justices shall hold a Criminal Court; another a Circuit Court; a third the special term; and a fourth a Ditsrict Court. Or any one of the justices may at the same time hold two or more of these courts. But these several justices, when holding courts in this manner, have no authority or jurisdiction of their own, for the law has given them none. Their powers and jurisdiction are those of the "Supreme Court;" and these it is which make a court. The court where the powers and jurisdiction of the Supreme Court of the District of Columbia are exercised is that court. The Supreme Court of the District holds the Criminal Court and the law makes one judge the court for that purpose.

The contempt in question was, therefore, a contempt of the authority of the Supreme Court. Otherwise no member of the bar could be dismissed for contempt of the authority of the court unless such contempt was offered to the court in general term. Thus protected, any member might, if so disposed, and this is by no means an extravagant supposition should the petitioner succeed in the present attempt,) walk around the courts, from one to another, denouncing the judges as liars, seriatim, and the court would be powerless to rid itself of his presence.

This conduct of Mr. Bradley, however, was not merely a contempt of the authority of the Supreme Court of this District, but was also gross misbehavior in his office of attorney, and for this reason, also, his offence was cognizable by the court in general term, irrespective of the doctrine of contempts.

It is true that the rule to show cause ordered against him by the court, in general term, ignored the order made by Judge Fisher, and called upon him to answer for the specified acts as a contempt;
28 yet, after his return was made, the court, as it had the right to do, considered his offense in both these aspects, and "ordered that for the causes set forth in said rule, the name of Mr. Bradley be stricken from the roll of attorneys, solicitors, &c., authorized to practise in this court."

The authority of the courts to expel a member from the bar, not merely for contempts offered in court, but for misbehavior as an attorney, so clearly announced in the case of Secombe, has also received the sanction of this court in the recent case of ex parte Garland, 4 Wallace, 379, where the court say: "In ex parte Secombe, a mandamus to the Supreme Court of the Territory of Minnesota, to vacate an order removing an attorney and counsellor was denied by this court on the ground that the removal was a judicial act. We are not aware of any case, said the court, where a mandamus was issued to an inferior tribunal commanding it to reverse or annul its decision where the decision was in its nature a judicial act and within the scope of its jurisdiction and discretion. And in the same case the

court observed that "it has been well settled by the rules and practice of common law courts that it rests exclusively with the court to determine who is qualified to become one of its officers as an attorney and consellor, and for what cause he ought to be removed." The jurisdiction of the court in removing Mr. Bradley, besides, belonged to the court under an express statute of Maryland which is in force in this District.

By the act of May, 1719, ch. 4, section 2, it is enacted: "That the several magistrates, judges of the several courts within this province, be and are hereby authorized and strictly required to observe the demeanor of all practitioners of the law before them, as well as all ministerial officers or other persons who shall use any indecent liberties to the lessening the grandeur and authority of their respective courts, and to discountenance and punish the same, according to the nature of the offence, either by suspending such practitioners of the law from their practice, perpetually, or for a time, or to punish such practitioners, or ministerial officers or other persons, by fine, at the discretion of such court before whom such offence shall be committed, not exceeding four thousand pounds of tobacco in the Superior Courts, nor two thousand pounds of tobacco in the several County Courts within this province, on each offender, for any one offense."

29 Whether viewed as a contempt or as misbehavior, therefore, the Supreme Court of the District of Columbia possessed exclusive jurisdiction to make the order removing Mr. Bradley from its bar, and that decision is beyond review.

2d. But there remains still to be examined another cause for the order of removal of Mr. Bradley, which did not take place in court.

Immediately after the court had adjourned on the 10th of August, the day of the scene above referred to, Mr. Bradley followed Judge Fisher into one of the street cars, and there, in person, handed him a note, of which the following is a copy:

WASHINGTON, *August* 6, 1867.

"Hon. George P. Fisher:

SIR: In the altercation which occurred between us when you returned to the court-room after the adjournment on the 2d of July last, you observed that you were sick, and were then pleased to add "You know where to find me; and I hold myself responsible in every form for whatever I say or do," or words to that effect, after which you applied to me most opprobrious epithets. There is but one interpretation of such an intimation received among gentlemen. I told you I could wait; and am gratified to find that you have recovered, and that the trial of the then pending case being now closed, we are both at liberty.

"That no time may be unnecessarily lost, I beg you will let me know, as soon as you conveniently can, when it will suit you to meet me out of this District, that we may arrange, to our mutual satis-

faction, the points of difference between us without incurring the risk and odium which might accompany any controversy here, or in public.

"With the same view I hand you this note in person, and am, sir, your most obedient servant,

(Signed) "JOS. H. BRADLEY."

This note bears date the 6th of August, and, of course, contains no reference to the occurrences in court on the 10th. The insult for which it demands, or seems to demand, redress, it states, was given by Judge Fisher in the court-room on the 2d of July. It was, therefore, a deliberate act. If its object was to obtain satisfaction according to the acceptation of that term among "gentlemen," it was in violation of the act of Congress of 20th February, 1839, which makes it a felony to send or receive, in this District, a challenge to fight a duel; and provides the same penalties for such as shall seek to evade its provisions, by making arrrangements in the District to give or receive such challenge out of the District.

One of the reasons given by Mr. Bradley in his answer for delivering this note is, "that it was not deemed advisable to seek those explanations, or that compromise and adjustment of private quarrels which too often result in a breach of the peace, in a jurisdiction where the parties might be made amenable to a criminal proceeding before the court of which one of the parties was a member." A breach of the peace out of the district was then one of the contingencies contemplated when the note was delivered.

But the same answer says that the note "was not a challenge, nor meant, nor intended for one. It was precisely what has been stated, opening a way for an amicable settlement of a private controversy;" and in another place, that "his object and determination was to open the speediest way to that explanation and retraction which every honorable man must be desirous to make when he becomes satisfied he has done an injury to another."

The misfortune is, however, that these amiable views were a secret in the writer's own bosom. On its face, the note, if not a perfected challenge, was plainly portentous of mischief, according to the manner of the duelist. It was the result of more than a month of deliberation. The resolution of its writer was, therefore, not to be shaken. Its language was reserved, lofty, punctilious, calm, determined. The mysteriousness of its intimations was something terrible.

Such was the face it presented to Judge Fisher. Its peaceful intentions were concealed from his sight; and these were, that it should open the way to "explanation and retraction;" and the judge was the party who was to be brought to "explanation and retraction." The terrors of the note were a pretense and a sham, intended only to operate on the judge's fears, and so lead the way to peace.

And this, we doubt not, is a truthful explanation. Indeed, we have, ourselves, never regarded the note as an earnest transcript of

its writer's intentions, and his disclaimer, though made post litem motam, may be taken for true, and the rather so when we recur to the fact of its long delay, and the ostentatious publicity of
31 its delivery, by the hand of the writer himself—a kind of proceeding not allowed by the code amongst gentlemen who are serious in their pursuit of "satisfaction."

We respectfully submit, therefore, that the case of the petitioner has not been mended by these explanations and disavowals.

A court destitute of the power to protect its judges from such experiments as this, upon their fears, would soon be driven from its seat; or, if possessing the power, but too pusillanimous to use it, must sink into deserved contempt.

In thus shewing cause against the present rule, we have relied entirely on the facts in the record before the court, either stated or admitted by the petitioner himself, and on such authorities as we supposed would be most weighty in this tribunal.

The return, we admit, is argumentative, but it is a return in answer to a rule to shew cause, and we have only followed, in this respect, the precedent set by the judges of the Court of King's Bench, in the great case of Bridgman vs. Holt et al., Show. Par. Cases, 111, in their return to an order of the House of Lords, quoted at length with enthusiastic approval by Mr. Justice Baldwin, in ex parte Crane, 5 Peters, 212, &c.; that, also, of Judge Conkling, in ex parte Bradstreet, 7 Peters, 634; and that of the United States vs. Kendall, 5 Cranch, C. C. R., and in 12 Peters Rep., 527, where the return made by the respondent consisted of an exceedingly elaborate argument on questions of constitutional law, covering forty-three pages of printed matter.

D. K. CARTTER,
Chief Justice.
GEORGE P. FISHER,
A. B. OLIN,
ANDREW WYLIE,
Justices.

32 I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, hereby certify that the foregoing, (including the eight printed pages preceding,) are truly copied from originals on file and of record in said court, in the case ex parte: Joseph H. Bradley, petitioner, &c.

Witness my hand and the seal of said court, at office, the 5th day of December, 1868.

[SEAL.] R. J. MEIGS, *Clerk.*

Orig. No. 8—3

Supreme Court of the United States.

Ex Parte Jos. H. Bradley.

APPLICATION FOR MANDAMUS

TO

Supreme Court of the District of Columbia.

P. PHILLIPS,

Of Counsel for Relator.

Washington, November 17, 1868.

WASHINGTON:
INTELLIGENCER PRINTING HOUSE,
401 and 403 D Street, near 7th.
1868.

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

EX PARTE JOSEPH H. BRADLEY.

Application for a Mandamus.

BRIEF OF COUNSEL FOR RELATOR.

The judgment complained of was rendered by the "Supreme Court of the District of Columbia," on the 9th of November, 1867. By this judgment J. H. Bradley's name was ordered to be "stricken from the Roll of Attorneys, Solicitors, &c., authorized *to practice in this Court,*" and this "for the *causes set forth in said Rule.*"

The rule is thus referred to and made part of the judgment as fully as if *the judgment had itself recited the causes.*

By reference to the rule we find the causes set forth to be a certain transaction which occurred at the June Term, 1867, of the "Criminal Court," pending the trial of John H. Surratt, for the murder of Abraham Lincoln, immediately after the adjournment of said Court, "and as the presiding Judge, (Mr. Justice Fisher) was descending from the Bench." This consisted of offensive language used to said Judge. For this the said justice, on the 10th day of August, entered a judgment, ordering that the name of Mr. Bradley "be stricken from the Rolls of Attorneys *practicing in this Court.*"

The Rule refers also to the conduct of the party at the time Judge Fisher announced the order directing his name to be stricken from the Roll, and to a letter under date of 6th August, delivered by him to said Judge in the street car.

The Rule requires cause to be shown "why he should not "be punished for contempt of *this Court*, by reason of said "offensive conduct and language towards *one of its members* "and relating to the official acts of said Justice."

It is admitted that the jurisdiction of the Court does not extend to the examination of the merits of the controversy. The facts are, therefore, as stated, assumed to be true for the purpose of the argument.

Nor shall we call upon the Court *to go behind the judgment* to ascertain what the facts are upon which it rests, for here *the judgment itself declares the facts upon which the exercise of the jurisdiction is based.*

The case thus presents a judgment rendered in one Court for a contempt committed in another Court—held months previously.

That this is so, will be readily seen by reference to the Statutes organizing the Courts of this District.

By the act 27th February, 1801 (2. stat. 103) there was organized for this District, a Court to be called the "Circuit Court of the District of Columbia, vested with all the powers of the Circuit Courts of the United States." The 5th Sec. further provided that it should have "cognizance of all *crimes and offences* committed within said District, and of all cases in Law and Equity between parties, both or either of whom shall be resident, or be found within said District, of all actions of a civil nature at Common Law, or in Equity, in which the United States shall be plaintiffs; and of all seizures on land or water, and all penalties and forfeitures arising under the laws of the United States."

By the 24th Sec. of the Act 29th April, 1802, it is provi ded that the Chief Judge of the District of Columbia shall hold a District Court in and for said District, "which Court shall have and exercise within said District, the same powers and jurisdiction which are by law vested in the District Courts of the United States."

Thus stood the jurisdiction, until the passage of the Act "To establish a Criminal Court in the District of Columbia," of July, 1838, (5 Stat. 306,) for the trial of all causes and offences committed in said District.

The District Attorney and Marshal of the said District, and the Clerks of the Circuit Court were required to attend said Court; all recognizances and criminal proceedings of whatsoever nature, pending in the Circuit Court, were directed to be transferred to the Criminal Court, and there to be proceeded with as they would have been in the Circuit Court—"and the said Criminal Court shall have jurisdiction now held by the Circuit Court for the trial and punishment of all crimes and offences, and the recovery of all fines and forfeitures and recognizances."

The fifth section provided for a writ of error from the Circuit Court, or any Judge thereof, in any criminal case wherein final judgment had been pronounced by the "Criminal Court" convicting any person of any crime or misdemeanor.

And the seventh section permitted the Judge of the Criminal Court, with the consent of the person accused, to adjourn any question of law to the Circuit Court.

This act was amended on the 20th of February, 1839, (5 Stat., 516,) by an act providing that in case of the inability of the Judge of the Criminal Court to hold his Court, one of the Judges of the Circuit Court should take his place.

It was further provided that the Judge of the Criminal Court shall be authorized to make all needful rules of practice, and *to provide a seal for said Court.*

Further, that in any case where the party may be related to the Judge of the Criminal Court, then the case and the Record thereof should be sent to the Circuit Court of the District, to be there tried and determined, as if this act and the act to which it is supplemental had never been passed.

This narrative is all that is needed to show that from the passage of the act of 1838, the original criminal jurisdiction of this District was vested in a *separate and distinct Court*, known as the "Criminal Court," and that the Circuit Court thereafter possessed alone a supervisory power in criminal cases by writ of error or the adjourning of a question of law by the consent of the accused.

On the 3d March, 1863, (12 Stat., 762,) the Courts of the District were reorganized. The first section of the act provides that a Court shall be established, "to be called the Supreme Court of the District of Columbia, which shall have *general jurisdiction in law and Equity*," and be composed of four Justices.

This general jurisdiction is, however, explained by the third section, which provides that the said Supreme Court "shall possess the same powers and exercise the same jurisdiction *as is now possessed and exercised by the Circuit Court of the District of Columbia*."

It then provides for a "District Court," which is vested "with the same powers and jurisdiction possessed and exercised by other District Courts of the United States," and also for a "Criminal Court," for the trial of all offences and crimes arising within the District, which Court shall possess the same powers and exercise the same jurisdiction now possessed and exercised by the Criminal Court of the District of Columbia.

The fourth section provides that District Courts and Criminal Courts shall be held by one of the Justices of the Supreme Court at the several times when such Courts are now required by law to be held, and at the same place.

The fifth section provides that special terms of said Supreme Court shall be held by one of the Justices, before which certain motions may be made, and suits in Equity heard, when not triable by jury.

The Justice, at his discretion, may order such motion or

suit to be heard in the first instance at a general Term, and, where any Order or Decree involves the merits of the action, an appeal is allowed to the general Term. The manner of taking this appeal is provided for in the 6th section.

The thirteenth section directs that "all suits and proceedings" at the date of the act "pending in any of the *Courts* hereby abolished, shall be transferred to the *Courts* to be established under the provisions of this act.

By section sixteen it is enacted "that the Circuit Court, District Court and Criminal Court of the District of Columbia, are hereby abolished. All laws relating to said *Courts*, so far as the same are applicable to the *Courts* created by this act, are hereby continued in force in respect to such *Courts*, and all other laws relating to said Circuit, District, and Criminal *Courts*, are repealed."

It will be thus seen that the District and Criminal Courts are possessed of distinct jurisdictions. The Supreme Court of the District has no original jurisdiction in criminal cases. It is vested with only such powers as the Circuit Court possessed at the date of the act of 1863, and its relation to the Criminal Court is the same as that borne by the Circuit Court when the act was passed.

Having thus shown that the Supreme Court of the District is distinct from the Criminal Court, it cannot be necessary to argue that this distinctness is abrogated by the provision that one of the Justices of the "Supreme Court is directed to preside in that Court.

From the quotations made it will be seen that it was the duty of one of the Judges of the old Circuit Court to preside in the Criminal Court when the special Judge of that Court was disabled or disqualified from acting, and so the Judges of the Supreme Court of the United States preside in the Circuit Courts, but it has never been supposed that this personal relation confounded the jurisdictions of the two Courts.

The question, then, arises had the Judges of the "Supreme Court of the District of Columbia" the jurisdiction to punish for a contempt committed in the "Criminal Court."

The power here has been exercised upon an attorney, but if it exist it could equally as well have been applied to any other person.

The punishment inflicted is deprivation of the right to practice his profession, but the power equally extends when rightfully exercised, to fine and imprisonment.

At common law this power to punish summarily for contempt is held to be inherent in all Courts, on the principle of self-protection. Though liable to great abuse, it is vindicated by the necessity which exists for its exercise.

In this country, where the liberty of the citizen is zealously guarded by Constitutional guarantees, this power is purely exceptional.

This whole subject is fully discussed in the impeachment trial of Judge Peck. The case before the Senate was that of an attorney who had been suspended for eighteen months from the practice of his profession, and imprisoned twenty-four hours. The power of the Judge to suspend or disbar an attorney was prominently put forward in the discussion, as will be seen by the remarks of Mr. Buchanan, one of the managers. He asks: "Had Judge Peck the power in this case to suspend Mr. Lawless from practicing his profession? It is of importance to us who belong to the bar to have the decision of the Court upon this question. If he had, the members of a profession which has ever stood foremost in this country in defence of civil liberty, are themselves the veriest slaves in existence," &c., &c., &c. (Trial, p. 450.)

Immediately after the acquittal of the Judge—on a vote of 22 to 21—Mr. Buchanan introduced a Bill "Declaratory of the law concerning contempts of Court," which in a few weeks passed both houses, and was approved by the President on 2d March, 1831.

It is proper to make another reference to the trial. It was contended by the Managers that the 17th Sec. of the Judiciary Act of 1789, which authorizes the Courts "to punish by *fine* and *imprisonment* all contempts of authority *in any cause or hearing before the same*," was a legislative limitation of the power of the Courts. This was denied by the defense, Mr. Wirt insisting—"If the power would have existed without the Statute, or if it existed before and independent of it, then a statute containing mere *affirmative declaration* with regard to it, without *negative words*, is never considered as a *limitation* of the power, but is simply regarded as a mere *general recognition of its independent existence*—in technical language as a mere *declaratory act*—an act *declaratory of the pre-existing law*." This position of Mr. Wirt is sustained by the opinion of the Court in Anderson vs. Dunn—"It is true that the Courts of the United States are vested by express Statute provision, (Act 1789,) with power to fine and imprison for contempt; but it does not follow from this circumstance that they would not have exercised that power without the aid of the Statute, or not in cases if such should occur, to which such Statute provision may not extend. On the contrary, it is a legislative assertion of this right, as incidental to a grant of judicial power, and can only be considered either as an instance of abundant caution, or a legislative declaration that the power of punishment for contempt shall not extend beyond its known and acknowleged limits of fine and imprisonment." (Trial, p. 500; 6 Wheat 204.)

These are the turning points of the discussion, and are referred to as aids in arriving at the intention of the Legislature in passing the act of 1831, by which alone, we respectfully submit, the question now before the Court must be determined.

The act is as follows:

SEC. 1. "The power of the several Courts of the United

"States to issue attachments, and inflict summary punish-
" ments for contempts of Court, shall not be construed to
" extend to any cases, except the misbehavior of any person
" or persons in the presence of said Courts, or so near there-
" to as to obstruct the administration of justice, the misbe-
" havior of the Officers of said Courts in their official trans-
" actions, and the disobedience or resistance by any officer
" of said Courts, party, juror, witness, or any other person
" or persons, to any lawful writ, process, order, rule, decree
" or command of the said Courts."

" Sec. 2. That if any person or persons shall corruptly,
" or by threats and force, endeavor to influence, intimidate
" or impede any juror, witness, or officer in any Court of the
" United States, in the discharge of his duty, or shall cor-
" ruptly, or by threats, or force, obstruct or impede, or en-
" deavor to obstruct or impede the due administration of
" justice therein, every person or persons so offending, shall
" be liable to prosecution therefore, by indictment, and shall
" on conviction thereof be punished by fine, not exceeding
" five hundred dollars, or by imprisonment not exceeding
" three months, or both, according to the nature and aggra-
" vation of the offense."

If we have established that the "Supreme Court of the District of Columbia" is a tribunal distinct from that of the "Criminal Court," then independently of statutory enactments there is no power in the former to punish for a contempt to the latter. Such a power was never exercised at Common Law, and is not included in the principle of "*self-protection*" upon which the whole doctrine of contempts is founded. The language of Chief Justice Marshall, in Ex-parte Tillinghast, is full on this point. "This Court does not consider itself authorized to punish here for contempts which may have been committed in that (District) Court." 4 Pet. 108.

Referring now to the Statute, it is to be observed how

carefully it is framed, to avoid the construction placed by Mr. Wirt on the Act of 1789. The negative words which are absent in that Act, and on the absence of which he maintained it did not operate by way of limitation, are here inserted. The power to issue attachments and inflict summary punishments *shall not be construed to extend, &c., &c.,*

These words operate as the exact equivalent of the declaration that thenceforward, the several Courts shall not have *jurisdiction* to punish, but in the cases specified.

Whatever may have been said of the power before the statute as resting in *discretion*, thenceforward it was a power conferred by statute and to be exercised like any other jurisdiction by the limitations which the enabling act prescribed.

The act requires that the misbehaviour, for which this summary punishment may be inflicted, should be in the *presence of the Court.* If the judgment should show that it was inflicted for conduct not in its presence, it would be no more entitled to respect, because signed by a Judge, than by a non-judicial person.

So the act, after specifying to what cases only the power to issue attachments and inflict summary punishments shall extend, provides in its second section, that other acts heretofore considered as falling within the power, shall only be prosecuted by *indictment.* If the judgment in a summary proceeding should show that the Court had acted on either of the cases specified by this section, the judgment would be a nullity and all concerned in its enforcement would be held as trespassers.

Is the case of the petitioner within the purview of the act? We have shown by the extracts from Peek's trial that the suspension of Mr. Lawless, was one of the grounds of the impeachment; that this suspension was argued by the manager as a ground of conviction, and that it was this manager who introduced the act in question.

Is there anything in the act to justify the conclusion, that an attorney-at-law is not embraced by it? What is it that the act seeks to limit? Is it the "*power* of the several Courts to issue attachments and inflict summary punishment for *contempts of Courts.*"

The recital of this judgment expressly declares, that the petitioner was "punished for contempt," and that in a summary manner. This would seem to be sufficient to show that there has been an exercise of power within the express prohibitions of the act."

Again, as if not contented with the comprehensiveness of word "power," the act declares it shall not "extend to *any cases* except," &c.

To say now that there are powers and cases not within these restricting clauses, would be to deny the capacity of language to convey the ideas of men.

But if it were permissible in order to sustain the judgment, to deny what it asserts in terms and to argue that the disbarring of an attorney is not a *punishment,* we shall find a ready answer, in the language of this Court in the case of Garland.

"The attorney and counsellor being by the solemn judicial act of the Court clothed with his office, does not hold it as a *matter of grace and favor.* The *right* which it confers upon him to appear for suitors and to argue causes, is something more than a mere *indulgence, revocable at the pleasue of the Court,* or at the command of the legislature. It is a right of which he can only be deprived by the *judgment* of the Court for moral or professional delinquency." And again, "their admission or exclusion is not the exercise of a mere *ministerial power,* it is the exercise of *judicial power.*"

So in the case of Cummings, the Court hold that "the theory upon which our political institutions rests, is, that all men have certain inalienable rights. That among them, are life, liberty and the pursuit of happiness, and that in the pursuit

of happiness all avocations, all honors, all positions are alike open to every one, and in the protection of their rights all are equal before the law. *Any deprivation or any suspension of any of their rights* for past conduct is *punishment*, and can be in no otherwise defined. (4 Wallace, 321.)

These principles were applied by the Court to the act of Congress requiring attorneys-at-law to take the test oath as a condition to their practicing, and the act was held invalid because it was passed "as the means of *inflicting punishment* against the prohibition of the Constitution."

If the act in question was held to be a punishment and therefore void by Constitutional prohibition, then this judgment of the Court is equally a punishment and void by legal prohibition.

The only remaining question is, has this Court the power by mandamus to restore the petitioner, in a case where the judgment of dismissal on its face shows that the Court a quo exceeded its jurisdiction.

At common law the writ of mandamus is a writ of right every day made use of to oblige inferior courts and magistrates to do justice, but it will not be granted to control the exercise of *discretion*. In general it lies where one is "refused to be admitted or turned out wrongfully from any office or franchise." (3 Burrows, 1266.)

The origin of this writ may be traced to that clause of Magna Charta which declares that "nulli negabimus aut differemus justitiam vel rectum." (10 Mod., 53.)

In the fifteenth century it was so frequently used to enforce restitution to office as to be known by the appellation of "*writ of restitution.*"

The nature of the writ and its application are commented on by Bacon, Title "mandamus" where it is held to be the appropriate remedy *to restore an attorney.*

People v. Sup. ct. 5 Wend. 126
10 " 289

In the United States, by the act of 1789, the power is conferred on this Court to issue the "writ of mandamus in cases warranted by the principles and usages of law to any Courts appointed, or persons holding office under the authority of the United States."

The fourteenth section confers power on all the Courts named to "issue writs of scire facias, habeas corpus, and all other writs, not specially provided for by statute, which may be necessary to the exercise of their respective jurisdictions, agreeable to the principles and usages of law."

In Marbury vs. Madison, (1 Cranch, 161,) this Court held: That every right when witheld must have a remedy, *and every injury its proper redress.*

That whenever there is a right to execute an office, perform a service, or exercise a franchise, and the person is kept out of possession, or dispossessed, and has no other specific remedy, a mandamus will lie.

That in the exercise of appellate power the Court has authority to issue the writ.

That the appellate jurisdiction may be exercised in a variety of forms and that a mandamus may be properly used for that purpose.

That while the Court has no power to issue the writ to public officers, because this would be the exercise of original jurisdiction, which could not be enlarged by act of Congress, it has the power to direct the writ to *Courts of justice.*

In ex parte Crane (5 Pet., 193) the Court says: That as a doubt had been expressed as to the power of the Court, it was proper that the "question should be settled and the opinion of the Court announced." They hold that mandamus to an inferior Court of the United States is, in the nature of appellate jurisdiction, and therefore within the competency of the Court. That in England it is awarded by the Chancellor, but in the United States it is expressly conferred on this Court, which exercises both common law and chancery

powers, and is vested with appellate power, and exercises extensive control over the Courts of the United States.

That the judicial act expressly confers on this Court the power of *general superintendence* of inferior courts, no other tribunal exists by which it can be exercised.

In ex parte Hoyt (13 Pet., 291) these principles are again affirmed, but the application was refused on the ground that the case made, did not warrant the writ, as it sought to "reverse the solemn judgment of the District judge in a matter clearly *within his jurisdiction.*" That this writ was not the "proper process to correct an *erroneous judgment.*"

The application of these principles to the precise character of this case first arose in ex parte Burr, 9 Wheat, 529, decided in 1824. In this case the proceedings were supposed to be *irregular*, because Mr. Burr was put to answer charges not made on oath.

In delivering the opinion, Chief Justice Marshal says: "Some doubts are felt in this Court respecting the extent of its authority as to the conduct of the Circuit and District Courts towards their officers; but without deciding on this question the Court is not inclined to interpose, unless where the conduct of the Court was *irregular* or was *flagrantly improper.*" After showing that the affidavits had been waived by Burr, the judge proceeds: "There is then no irregularity which would justify the interposition of this Court. It could only interpose on the ground that the *Circuit Court had clearly exceeded its powers*, or had *decided erroneously on the testimony.* Upon the testimony this Court would not be willing to interpose where any doubt existed, and it is the less inclined to interpose, because the complaint is not of an absolute removal, but of a suspension which is nearly expired."

The only other case reported is that of ex parte Secombe, (19 Howd., 9,) in which the judgment declares the removal of the attorney for "his acts as such in open Court at the present term thereof in willful violation of sec. 7, chap. 93

of the Revised Statutes of the Territory, and also in violation of his official oath to conduct himself with fidelity to the Court."

In the opening of the opinion in this case, Chief Justice Taney refers to the case of Tillinghast vs. Conklin, decided at the January Term, 1829, in which a similar motion was overruled upon the ground that the Court had not jurisdiction.

This "brief written opinion not reported," and thus referred to, the clerk is unable to find; but the popular history of the case enables me to say that the application for mandamus did not involve the question of the jurisdiction of Judge Conklin, but questioned the propriety of its exercise only.

This is confirmed by the statement of Mr. Hoffman in moving for the admission of Tillinghast, as reported in the case from 4 Pet., already cited. He said: "If the Court will go into the examination of the circumstances of the case, Mr. T. is fully prepared and willing to proceed. He is desirous that this Court would hear *the facts and decide upon them.*" It is understood that on a former occasion when a mandamus was applied for to restore the applicant, *this Court would not go into the examination of the facts of the case,* and they may not now be disposed to do so." Doubtless the success of the application was greatly rested on the language of Judge Marshal, in Burr's case, that the Court would "only interpose when the Circuit Court had clearly exceeded its powers, or *had erroneously decided on the testimony.*"

I have the right, therefore, to assume that the decision was limited to the exigency of the case. The judgment, as recited by Judge Taney, is: "The motion is overruled upon the ground that it had not jurisdiction in *the case.*" The case was an application to review, by mandamus, the *facts* upon which the judgment was founded.

The application by Secomb for the mandamus, rested alone upon the allegation that he had received no notice or information prior to the rendering of the judgment, and that he was not present when it was entered.

He relied upon the statute of Minesota prescribing the proceedings against an attorney. This statute derived its obligatory force from the act of 3d March, 1849, extending the legislative power of the Territorial government "to all rightful subjects of legislation."

The judge enters into a full consideration of this statute: "It will be observed," says he, "it does not attempt to *specify the acts* which shall be deemed disrespectful to the Court. It must, therefore, rest with the Court to determine what acts amount to a violation of this provision; and this is a *judicial power vested in the Court by the legislature.* The removal of the Relator *therefore,* for the cause above-mentioned, was the act of a Court done in the exercise of a *judicial discretion,* which the law *authorized and required it to exercise.*"

Such a decision "cannot be reviewed or reversed in this form of proceeding, however *erroneous* it may be; and we are not aware of any case where a mandamus has issued to an inferior tribunal commanding it to reverse or annul its decision, where the decision was in its nature a judicial act, and *within the scope of its jurisdiction and discretion.*"

The same principles are applied by the Court to the form of the proceedings and the want of notice.

"As the offence was committed in open Court, it was necessarily to be decided whether the statute required notice to be given. The Court decided that in such a case notice was not necessary, and whether the decision was *erroneous* or not, it was made in the exercise of judicial *authority* when the subject matter was *within their jurisdiction,* and it, *therefore,* cannot be revised and annulled in this form of proceeding." On these grounds the mandamus was refused.

In California where the jurisdiction of the Supreme Court is under the same limitations, as is this Court, the writ of mandamus is held to be the proper remedy to compel the inferior Court to restore an attorney whose name had been stricken from the Rolls People vs. Turner, 1 Cal., 143.

The principle of this case was again recognized and the order dismissing an attorney directed to be vacated in. (Fletcher vs. Dangerfield, 20 Cal., 429.)

On the part of the Relator it is insisted that the questions now under consideration must be determined under the act of 1831. This is the first occasion in which this act has been presented for adjudication to this Court.

In several of the States acts of this kind have been passed. They have been uniformily construed as limiting the jurisdiction of the Courts, and when they have exceeded the limitation, their judgments have been held void.

In the case from 20 Cal. the judgment of the Supreme Court was based on the ground that the State act of 1839 did not authorize the striking of an attorney from the rolls. because the grounds of a motion made by him were not sustained by the facts.

In Illinois the statute provides that the Courts shall have power to "punish for contempts offered by any person to it while sitting, and for disobeying any of its proceedings, rules and orders made conformably to law."

In construing this statute the Supreme Court of that State holds that "the right to punish for contempt committed in the presence of the Court, is acknowledged by our statute, and while it affirms a principle inherent in all Courts of justice to defend itself when attacked, it may also, with great propriety, be regarded as a limitation upon the power of the Courts to punish for any other contempts;" and the Court adds: "In restricting the power to the cases specified, more benefit will result than by enlarging it. It is at best an arbitrary power," &c., &c.

In Secombe's case the statutory limitation is impliedly conceded as obligatory on the Court by the extended consideration of the Chief Justice of the character of the act for the purpose of demonstrating that the action of the judge was clearly within its provisions.

× People v. Justices 1 Johns Cas. 181
Dean. Judge 3 Hen & M. 1
1 Kent Com. 321 note

So in reference to the act of 1831, in has been held that the power to punish for a publication has been taken away. Ex Parte Poulson, 15 Har., Pa. Reg., 380.

And in the matter of John T. Pitman which was a rule on the clerk to show cause, why he should not return certain fees. Curtis, J. "This is an application to the Court to exercise its *summary jurisdiction* over its own officers from doing a wrong in his official capacity, such a wrong is considered to be a *contempt of Court.* This jurisdiction is expressly *saved* by act of Congress March, 1831. (1 Curtis, 189.)

In the opening of the opinion, in Secombe's case the Chief Justice says: "It has been well settled by the rules and practice of common law Courts that it rests exclusively with the Court to determine who is qualified to become one of its officers as an attorney and counsellor, and for what cause he ought to be removed. The power, however, is not an arbitrary and despotic one to be exercised at the pleasure of the Court, or from passion, prejudice, or personal hostility, but it is the duty of the Court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the Court as the rights and dignity of the Court itself."

These remarks about the powers of the Courts at common law in proceeding against attorneys for contempt, have in the view, we submit, no application to courts whose power on this subject is regulated by statute; and the judge would seem to have been of this opinion in the argument made to show that the statute justified the judgment. No reference is made in the opinion to Burr's case, in which it is so strongly intimated that the writ would be granted, when the Court "had clearly exceeded its powers, or had decided erroneously on the testimony." If the proposition now made that the Court can interfere when the judgment itself

shows a want of jurisdiction, is not sustainable; then it follows that no matter how gross may be the usurpation, or how apparent may be the want of jurisdiction, no redress can be had. If this be the true doctrine, what need was there of the extended argument in Secombe's case upon the powers of a statute? Why was not the application dismissed with the declaration that whether the judge exceeded his jurisdiction or not, this Court had no control over the case?

The writ of mandamus is a direct proceeding in the nature of a writ of error or appeal, and while it may not review matters which the law commits to the discretion of the inferior tribunals, it reaches all cases of excess of authority.

Even collaterally, judgments may be impeached when the Court is without jurisdiction. "If a Court act without authority its judgment and orders are regarded as nullities. They are not voidable but simply void; and form no bar to a recovery sought even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments and decrees are considered in law as tresspassers." Elliot vs. Pearsall, 1 Pet., 340.

When any Court is called on to receive as evidence the record of a judgment, its form and substance must necessarily be examined. Not it is true as a Court of errors, but to see that it is what it purports to be, the record of a judgment. And if upon the face of such record a want of jurisdiction appears it cannot be received as evidence. It does not bind the Defendant nor can it conclude his rights."

Lincoln vs. Towers, 2 McLean, 479.

The rule which distinguishes the judgments of the superior and inferior Courts, is thus stated by Saunders "nothing shall be *intended* to be *out* of the jurisdiction of a superior Court but what *specially appears to be so;* and on the contrary nothing shall be intended to be without the jurisdiction of an inferior Court, but that which is expressly alleged."

1, Saunders, 75.

X Harvey v Tyler 2 Wall 341

In the case before the Court it does "specially appear," that the *subject matter* was a contempt to another Court, which the Supreme Court had no power to punish.

The case then is submitted by me on these grounds:

1st. That the "Supreme Court of the District of Columbia" and the Criminal Court" are separate and distinct tribunals.

2d. That there is no power in one Court, either at common law or under the statute, to punish for a contempt committed before another.

3d. That the judgment on *its face* shows that the dismissal was by one Court for a contempt to another, and therefore void for want of jurisdiction.

4th. That the case, as thus presented, differs essentially from those cases in which the appellate tribunal is asked to reverse on the ground of absence of averments showing jurisdiction, or where it is called upon to go behind the judgment to ascertain that fact, or where mere error is alleged in questions within the judicial authority.

5th. That the act of 1831 is a limitation of jurisdiction in cases of contempt, and is obligatory on all courts of the United States.

6th. That by its legislative history, as well as by the comprehensiveness of its terms, it includes the case of an attorney-at-law, and denies to all courts the jurisdiction to punish him for any contempt except it be committed in its presence.

7th. That this disbarring of an attorney is a "summary punishment" within the purview of the act.

8th. That this is not a criminal proceeding, and, therefore, does not fall within the decisions, in which this Court on writ of *habeas corpus* refuses to reverse for want of appellate jurisdiction.

9th. That the Court, by virtue of its general supervisory power, as well as by statutory grant, has authority to issue the writ of mandamus to inferior tribunals as a means of

exerting its appellate power, and that by the "principles and usages of law" this case justifies its exercise.

The inconvenience arising from interfering with convictions for contempt by Courts is imaginary and idle. It is essential to the administration of justice that tribunals of justice should be armed with this authority; but it is not necessary that it should be unlimited, uncontrolled, indefinite arbitrary, and omnipotent. It is to be remembered that summary convictions are against the genius and spirit of our Constitution and in derogation of civil liberty. The judge is without check, and the accused without the usual guards of freedom. There is no grand jury to accuse; no petit jury to try; but his property and liberty depend upon the *fiat* of the Court. Is there not the strongest necessity for a review of such convictions? Is not the necessity of the check, at least equal to the necessity of the delegation of the power? Suppose the Court of Chancery should convict a man for high treason; that the Supreme Court should convict a jury for giving a verdict against law, and against the direction of the Court; that the house of assembly should commit a citizen for bringing a suit against an inspector for refusing his vote; that the Senate should under pretence of a contempt, convict the Governor of the State for sending a written communication instead of making a speech at the opening of the session, will any man have the hardihood to say that the person so improperly and illegally proceeded against, ought to be continued in prison? If says, Lord Chief Justice Holt (in the case of Paty) there be a wrongful imprisonment by the House of Commons, what Court shall deliver the party? Shall we say there is no redress, and that we are not able to execute the laws upon which the liberty of the Queen's people subsists? To conclude, all Courts are, so far, judges of their own privileges and intrusted with a power to vindicate themselves that they may punish for contempts; but to make them, or any

Court final judges of them, exclusive of every body else, is to introduce a state of confusion, by making every man a judge in his own cause and subverting the *measure of all jurisdictions.*" (Clinton Senator. Yates vs. The People, 6 Johns, 467.)

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